

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending WSR 94-04-088, filed 2/1/94, effective 3/4/94)

WAC 458-61-100 Refunds of tax paid. (1) Introduction.

Taxpayers who have paid the real estate excise tax or who have received a notice of assessment of tax and who wish to contest the application of the real estate excise tax to a particular transfer may file a petition for refund or correction of assessment as provided in this section. Only the taxpayer or the taxpayer's authorized agent may petition for a refund of tax.

(2) **Petitioning for a refund.** Any person who has overpaid any tax, interest, or penalty, may apply for a refund within four years from the date of sale by petitioning in writing for a refund of the amount overpaid. Claims for refund are to be made on forms prescribed by the department and made available at the county treasurers' offices and at the department.

(a) The taxpayer shall submit the completed form and all documentation supporting the claim for refund to the county treasurer's office in the county where the tax was originally paid.

(b) If the taxpayer originally paid the tax directly to the department, the form and supporting documentation shall be submitted to the department in accordance with the requirements of WAC 458-20-100, appeal procedures.

(3) **County treasurer's responsibilities--Petition received prior to sending affidavit to department.** If the taxpayer submits the petition for refund before the county treasurer has sent to the department the copy of the affidavit which receipted the tax payment now in question, the county treasurer is authorized to void the receipted affidavit copies, based upon the criteria listed in subsection (5) of this section, and issue the refund. If the county treasurer authorizes and issues such refund, the voided copy of the affidavit, with a copy of the refund petition attached, must be included in the monthly affidavit batch sent to the department. If the county treasurer does not authorize such refund, the treasurer shall send the petition for refund, along with a copy of the affidavit and all supporting records, to the department. The procedure for petitions sent to the department shall follow subsection (4) of this section.

(4) **County treasurer's responsibilities--Petition received**

after sending affidavit to department. If the taxpayer submits the petition for refund after the county treasurer has sent to the department the copy of the affidavit which receipted the payment now in question, the county treasurer shall verify the information on the petition and forward it to the department with a copy of the affidavit and any other supporting records furnished by the taxpayer. The department shall approve or deny the refund. The taxpayer may then appeal the imposition of the tax under the appeal procedures. See WAC ((458-61-100)) 458-20-100, appeals procedures. If such petition is denied, the department will return to the petitioner all supporting documents which are submitted with the petition for refund.

(5) Circumstances under which a refund of tax is authorized. The authority to issue tax refunds under this chapter is limited to:

(a) The reconveyance for transactions that are completely rescinded as defined in WAC 458-61-590;

(b) The reconveyance for sales rescinded by court order. In such case a copy of the court decision must be attached to the department's affidavit copy by the county treasurer (see also WAC 458-61-330: Foreclosure--Deeds in lieu of foreclosure);

(c) The initial conveyance recorded in error by an escrow agent before the closing date, provided the property is reconveyed back to the original owner;

(d) The reconveyance back to the original owner in (c) above;

(e) The initial conveyance recorded before a purchaser assumes an outstanding loan that represents the only consideration to be paid for the property, provided (i) the purchaser is unable to assume the loan and (ii) the property is reconveyed back to the original owner. The refund is allowed because the transaction lacked valuable consideration;

(f) The reconveyance back to the original owner in (e) above;

(g) Double payment of the tax;

((+d+)) (h) Overpayment of the tax through error of computation; and

((+e+)) (i) Failure of a taxpayer to claim tax exemption for a transfer which was properly exempt.